

one only as to one subject and against another as to a different subject, but has no cause of suit against them all jointly; unless the Court permits the disinterested co-plaintiff or co-defendant to be examined as a witness for the others in such case,—the really interested plaintiff may lose his right; or the plaintiff by thus making two or more persons defendants to his suit may, by that sort of mechanism, deprive the one defendant of the benefit of the other's evidence. *Nightingale v. Dodd*, *Mosl.* 229; *Amb.* 583; *Murray v. Shadwell*, 2 *Ves. & B.* 404. And therefore it is quite common in Chancery, to apply by petition, to have one of the parties examined as a witness, subject to all just exceptions; and unless the interest of the party, so proposed to be examined, is perfectly apparent, the order is granted almost as a matter of course, leaving the objections to be made and considered when the testimony is brought in. *Casey v. Beachfield*, *Prec. Ch.* 411; *Piddock v. Brown*, 3 *P. Will.* 288; *Meadbury v. Isdall*, 9 *Mod.* 438; *Gibson v. Albert*, 10 *Mod.* 19; *Dixon v. Parker*, 2 *Ves.* 219; *Man v. Ward*, 2 *Atk.* 228; *Barret v. Gore*, 3 *Atk.* 401; *Armiter v. Swanton*, *Amb.* 393; *Franklyn v. Colquhoun*, 16 *Ves.* 219; *De Tastet v. Bordenave*, *Jacob*, 516; *Fereday v. Wightwick*, 4 *Russ.* 114; *Hougham v. Sandys*, 2 *Sim. & Stu.* 221. But where a defendant has been examined and received, as a witness to the whole cause of action, the bill as to him must be dismissed with costs; because the plaintiff, by calling for and using his testimony, thus virtually admits, that he has no cause of complaint against him. *Thompson v. Harrison*, 1 *Cox*, 344; *Weymouth v. Boyer*, 1 *Ves. Jun.* 416; 2 *Fovc. Ex. Pra.* 85, 86.

Hence it may be assumed as a general rule, that where there must be a decree against all the defendants because of their joint or blended interests, there no one of them can be examined as a competent witness in the case; and upon the same ground of the indivisible and inseparable nature of their interests, the defence of any one, which shews, that the whole of such alleged joint or blended interest, never existed or has been barred or satisfied, must * necessarily preclude all relief against any one of
269 them. But where it appears, that the cause of suit against each arises out of distinct subjects; there, as each defendant is a competent witness as to the subject in which he is not interested, so there may, in respect to such different subjects, be separate decrees against each.

But here it has been shown, that the legal representatives of John Henderson are, all of them, liable to be charged by the contract set out in the bill, to the extent of the assets which have come to their hands respectively. And that, although each of them, to the extent of those assets, is so entirely liable to the plaintiffs as to entitle them to any relief, under the general prayer of their bill, that may be deemed most for their benefit; yet these defendants, as against each other, have an equitable claim to con-